Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling: Lawfulness	)	CC Docket No. 01-92
of Incumbent Local Exchange Carrier	)	
Wireless Termination Tariffs	)	

Initial Comments of TCA

I. Introduction

TCA, Inc. - Telcom Consulting Associates ("TCA") hereby submits these comments in response to the Petition for Declaratory Ruling as captioned above. The CMRS Petitioners[1] have requested that the Commission declare unlawful, tariffs filed in three states by rural LECs seeking compensation for the termination of CMRS traffic.

TCA is a consulting firm, which performs financial, regulatory and marketing services for over fifty small, rural LECs throughout the United States. TCA's clients derive a significant portion of their revenues from all types of intercarrier compensation and therefore will be directly impacted by the FCC's actions in this proceeding. These comments address the concerns of TCA's clients.

II. The Overriding Issue in this Proceeding is Simple: Who Pays?

In publicly-filed comments, "Western Wireless submits that the overriding issue in this proceeding is one of simple fairness, *viz*., who should pay for the costs incurred by CMRS [carriers] in originating and terminating IXC traffic?"[2] TCA agrees with Western Wireless in this regard, and, paraphrasing, submits that the overriding issue in *this* proceeding is also simple –

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[1] The Petitioners include: T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners. Within these comments, they will be referred to collectively as the "CMRS carriers."

[2] *In the Matter of Petitions of Sprint PCS and AT&T Corporation for Declaratory Ruling on Issues Contained in the Access Charge Litigation Sprint PCS v. AT&T*, WT No. 01-316, filed November 30, 2001, p. 2 ("Western Wireless comments").

who should pay for the costs incurred by rural LECs in originating and terminating CMRS traffic?

Throughout the Petition, the CMRS carriers state that while they are willing to negotiate an interconnection agreement, it is economically inefficient to do so.[3] TCA agrees - it is economically inefficient to negotiate multiple interconnection agreements for both parties. From a typical rural LEC's perspective, it may be handling traffic from numerous CMRS carriers. For any rural LEC, it is impossible to predict, on a daily basis, with which CMRS carriers it will need an interconnection agreement. At times, it may transport traffic on a strictly one-time basis as the CMRS customer moves through the rural LEC's local serving area. Neither the CMRS carriers nor the rural LECs should be forced into the position of forecasting future needs to be met by interconnection agreements. However, neither should either party be forced into foregoing fair and just compensation for use of their networks to preserve economic efficiency.

The CMRS carriers recently recognized the right of all carriers to receive compensation for the use of their networks in *Petitions of Sprint PCS and AT&T Corporation for Declaratory Ruling on Issues Contained in the Access Charge Litigation Sprint PCS v. AT&T*.[4] Three of the Petitioners in the instant proceeding, the aforementioned Western Wireless, Nextel Communications and Nextel Partners, all filed comments supporting Sprint PCS' right to compensation for the use of its network. The fact in this proceeding is these same CMRS carriers are trying to deny rural companies the very same right – to receive compensation for the use of their networks.

In the filed comments supporting Sprint PCS' position, the CMRS carriers clearly stake out the position that not compensating another carrier for use of its network "unfairly shift[s] the burden of these costs to the customers…"[5] Western Wireless further delineates this position by stating that exempting carriers "from the obligation to cover the costs they impose also sends the wrong economic signal…"[6] The incorrect economic signal noted by Western Wireless, in the case of rural LEC-CMRS carriers' traffic, allows the carrier which refuses to pay for the transit of its traffic, to ignore a cost component when determining its rates. The ignored cost, however small, ultimately will be paid. As Western Wireless states, "[w]hen viewed in this light, it is

[3] Petition for Declaratory Ruling, filed September 6, 2002, pp.3, 4 (the "Petition").
[4] Filed October 22, 2001 ("CMRS Access Charges Petition").
[5] *Comments of Nextel Partners, Inc.,* WT 01-316, filed November 30, 2001, p. 2 (Nextel Partners Comments").
[6] Western Wireless Comments, p. 3.

clear that the *cost-causers* … should carry their own weight – otherwise, they are being subsidized artificially by unrelated entities."[7]

III. The Current Intercarrier Compensation System Contributes to the difficulty presented in the Petition.

The current intercarrier compensation system, which categorizes existing intercarrier compensation arrangements as either access charges (for long distance traffic) or reciprocal compensation (for local traffic), is part of the problem in the current proceeding. The evolution of the Internet and wireless services has blurred the distinctions between technologies and has significantly changed the communications industry. The regulatory environment must continue to keep pace. These differing calling areas have resulted in regulatory arbitrage that has advantaged some providers and services over others. Any future regime, whether promulgated through a declaratory ruling or through a rulemaking proceeding, must recognize that different technologies will compete for the same customers and accordingly, a competitively neutral compensation system is absolutely necessary.

To further demonstrate the problem, the traffic at issue in the instant proceeding, indirect traffic terminating to rural LECs' networks via an access tandem over common trunks, is treated exactly in the same manner as other, non-CMRS, traffic terminating over those common trunks (i.e., interexchange toll). However, one difference exists in the treatment of interexchange toll traffic and CMRS terminating traffic – in most instances, the rural LEC is not being compensated for terminating the CMRS traffic. The FCC should resolve this discrepancy, either by affirming that rural LECs treat the CMRS traffic in a similar fashion as interexchange toll traffic, or adopt a compensation regime that ensures rural LECs are compensated for the use of their networks. TCA offers such a regime for the Commission's consideration below.

In its recent Notice of Proposed Rulemaking[8], the FCC proposes a bill-and-keep arrangement to resolve interconnection problems, the current *de facto* methodology between most rural LECs and CMRS carriers. Under a bill-and-keep arrangement, there are no

[7] Western Wireless Comments, p. 2. See also, *Comments of Nextel Communications, Inc*., WT 01-316, filed November 30, 2001, p. 6 ("Nextel Comments").
[8] Unified Intercarrier Compensation NPRM, 16 FCC Rcd 9610 (2001) ("Intercarrier Compensation NPRM").

termination charges and accordingly, each carrier is required to recover the cost of local facilities from its own customers.[9]

A bill-and-keep regime may be appropriate for some rural LECs in certain circumstances. For example, when both the CMRS carrier and the rural LEC own networks of comparable cost, exchanging comparable amounts of traffic with limited transport distances, then bill-and-keep may produce the best result. However, this example does not describe the current situation in which many rural LECs find themselves. Due to the sparsely populated areas they serve, the cost of their networks on a per customer basis far exceeds that of urban LECs. Furthermore, their transport distances are typically far greater than those of urban providers.

The different meaning of "local serving area" also greatly contributes to the current difficulties between rural LECs and CMRS carriers. For an rural LEC, local traffic is traffic that originates and terminates in a defined area. Whether communicating with its customers, other carriers or regulators, this meaning is constant. However, a CMRS carrier has two different definitions of "local serving area," dependent on who is asking. When communicating with regulators or other carriers, the local serving area is the Major Trading Area (MTA). When communicating with its customers, however, the local serving area is generally far smaller than the MTA. For example, a customer of T-Mobile USA receiving his bill in Colorado Springs, Colorado lives within MTA 22.[10] When the customer calls Scottsbluff, Nebraska, the local serving area of Qwest, from Colorado Springs, he is placing an intra-MTA call. Presumably, T-Mobile would consider the call to be "local" and Qwest would be due reciprocal compensation. However, when the customer receives his bill for the call, the call would be rated as "long distance" and the customer would be charged such rate.[11]

Where is the resulting harm? It may not be readily apparent between two roughly comparable carriers as T-Mobile and Qwest. However, when the comparison is made between a large CMRS carrier, like T-Mobile, and a small rural LEC, the resulting harm is quite obvious. It consists of the same harms cited by the CMRS carriers in their support of the CMRS Access Charges Petition – the rural LEC's customers unfairly bear the burden of the costs of transiting

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[9] NPRM ¶ 9

[10] See http://wireless.fcc.gov/auctions/data/maps/mta.pdf.

[11] See http://www.t-mobile.com/plans/regional/denver/. A call placed to T-Mobile's Customer Service (1-800-937-8997) on October 17, 2002 found that the hypothetical customer would be charged $0.20 per minute for a call originating in Colorado Springs, CO and terminating in Scottsbluff, NE.

the CMRS traffic. Further, an incorrect economic signal is sent as the CMRS carriers are allowed to ignore this particular cost when computing their rates.

IV. The FCC Should Adopt a Specific Wireline-CMRS Compensation Regime for Rural Areas.

TCA recommends the Commission adopt a specific intercarrier compensation regime for wireline to wireless traffic originating and terminating in rural company areas. This regime will be especially important if the FCC does not affirm that all traffic terminating to rural LEC networks on common trunks from an access tandem should be treated consistently. It is obvious that issues relating to telecommunications service in rural areas are different than those relating to urban areas. The Commission has recognized this fact in numerous instances – from Universal Service reform to access reform. TCA requests the Commission continue this vital recognition of the special needs in rural telephone company areas.

The Commission has already embarked on the proper path to begin investigating a reasonable compensation regime for wireline – wireless interconnection traffic – the intercarrier compensation proceeding, and more specifically, the Commission's determination regarding competitive local exchange carrier (CLEC) access charges[12]. In that proceeding, the Commission adopted an access compensation methodology for CLECs, which included a determination of a benchmark access charge level[13], which is presumed to be reasonable. TCA believes a similar process would be helpful in the instant matter. For example, the Commission could adopt a benchmark local termination rate for wireless carriers, such as that based on the incumbent rural carrier's cost, that could be used for all traffic terminating to the wireless carriers' networks, and that which can be properly classified as "local" traffic. In fact, the FCC previously found that "it is reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport

[12] In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, *Seventh Report and Order*, FCC 01-146 (rel. Apr. 27, 2001) *("CLEC Access Charge Order*")
[13] *CLEC Access Charge Order*, at paragraph 3

and termination."[14] TCA suggests that the FCC simply apply this finding to the current complaints the CMRS carriers have with rural LECs filing terminating traffic tariffs.

TCA urges the Commission to allow rural telephone companies to avoid the cost and effort related to negotiating and/or having arbitrated multiple reciprocal compensation agreements. The most rational way this can happen, absent treating CMRS and interexchange toll traffic consistently, is to allow rural telephone companies to file terminating traffic tariffs at the state level. Only in this way can rural telephone companies be assured of being compensated for terminating wireless traffic, which oftentimes is being passed to the rural company through the tending RBOC tandem without the rural company's knowledge.

V. Conclusion

TCA recommends the Commission deny the CMRS Carriers' petition, and not attempt to preempt wireless traffic termination tariffs filed by rural telephone companies at the state level. Instead, the Commission should take this opportunity to recognize that terminating CMRS and interexchange toll traffic is identical in nature, and should be treated by rural LECs consistently. In the alternative, the Commission should adopt a wireless/wireline terminating traffic compensation regime, specific to rural LEC areas, whereby both parties exchanging telecommunications traffic are allowed to charge their applicable rates. TCA suggests that the Commission could adopt a benchmark CMRS carrier terminating rate that is presumed reasonable, similar to what the Commission adopted for CLEC access charges.

Respectfully submitted,

[electronically filed]

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[14] First Report and Order in CC Dockets 96-98 and 95-185, at paragraph 1085, released August 8, 1996 (FCC 96-325)